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IN THE UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

BRADY L. DAVIS : CIVIL ACTION  
V. : NO.: 1:00-CV-00543

FRANK GILLIS, JOSEPH KORT, M.D., et :  
al. : JURY TRIAL DEMAND  
Judge Rambo

FILED

HARRISBURG

DEC 15 2000

REPLY BRIEF OF JOSEPH KORT, M.D. IN SUPPORT OF  
HIS MOTION TO DISMISS THE COMPLAINT OF BRADY L. DAVIS

Brady L. Davis ("Davis") has filed a complaint pursuant to 42 U.S.C. §1983 against various defendants including Joseph Kort, M.D. ("Kort"). Kort filed a motion to dismiss on several different grounds supported by a memorandum of law on August 15, 2000. Davis still has never responded to the motion to dismiss. Instead, he has filed an affidavit of exhaustion of administrative remedies dated December 6, 2000.

An examination of the affidavit shows that he has not exhausted all of his administrative remedies. He has not indicated that he ever sought monetary damages against Kort by means of his administrative remedies.

The Department of Corrections of the Commonwealth of Pennsylvania provides for an administrative remedy of damages for claims like Davis'. See DC-ADM804 a copy of which appears hereto as Exhibit "A". Davis has this remedy available to him. He has not indicated that he ever used it.

In Geisler v. Hoffman, the United States Court of Appeals for the Third Circuit, No. 99-1971 (Sept. 12, 2000)(unreported), the United States Court of Appeals concluded that even when an inmate plaintiff exhausted his administrative remedies he failed to exhaust all of his available administrative

remedies when he did not ask for monetary damages. A copy of the opinion of the Court of Appeals in Geisler appears hereto as Exhibit "B".<sup>1</sup>

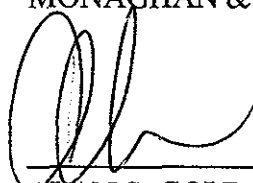
In his affidavit Davis also provides conflicting information. He states that as of December 6, 2000 he has filed with the Department of Corrections his final appeal concerning medical issues. He then submits a letter dated October 24, 2000 from the Department of Corrections indicating that his appeal has been denied by final review. It is unclear as to whether or not he has submitted an additional final appeal on a different medical issue that has not yet been adjudicated.

In the motion to dismiss Kort raised additional issues besides exhaustion of administrative remedies. Davis has not filed a response to this contentions although he has had more than four months in which to do so.

In the light of the foregoing and light of the previous memorandum of law submitted by Joseph Kort, M.D., Joseph Kort, M.D. respectfully requests that his motion to dismiss be granted.

MONAGHAN & GOLD, P.C.

BY:



ALAN S. GOLD

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<sup>1</sup> Although it is an unpublished opinion and has no precedential authority it is presented to the Court for the persuasiveness of its reasoning.

CERTIFICATE OF SERVICE

I hereby certify that I have sent a true and correct copy of defendant, Joseph Kort, M.D.'s Reply Brief in support of his Motion to Dismiss the Complaint of the Plaintiff by First Class Regular Mail on this date to the following individuals:

Brady L. Davis, Plaintiff  
S.C.I. Coal Township  
One Kelley Drive  
Coal Township, PA 17866-1020

Raymond Dorian, Esquire  
Commonwealth of Pennsylvania  
Department of Corrections  
55 Utley Drive  
Camp Hill, PA 17010



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ALAN S. GOLD

Date: 12/14/00